There is, however, one important difference between Exhibit B taken down by Mr. Smith in English and the certified translation of Exhibit C, the Chinese version, taken down by Yap Seow Swee. No translation of Exhibit C was available at the trial and Exhibit C was handed by the learned Judge to one of the Chinese assessors who having read it stated it was the same as Exhibit B. This statement was incorrect and it would appear from the record that neither the learned Judge nor the other assessor had any knowledge of the true contents of Exhibit C. According to Exhibit B, the evidence of Mr. Smith and the evidence of Tan Kian the caution which was administered to the appellant before he made the statement was in the correct statutory form as laid down by Regulation 33 (1) (b) following the amendment made by Legal Notification No. 2 of 10th of January, 1949. This form reads as follows :—

> It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence at your trial.

According to Exhibit C, the caution which was administered to the appellant made no reference to questions as from this document it would appear that the caution administered to the appellant by the interpreter was as follows :—

> You need not say anything if you do not wish to but anything you may say may be given in evidence at the trial.

When this form of caution is compared with the correct statutory form, it is clear that the former is incomplete because the double reference to questions provided for in the latter is omitted, and following the decision of this Court in *Poon Heong v. Public Prosecutor*[1] any statement made as a result of an incomplete form of caution of this nature is inadmissible.

As the prosecution produced conflicting evidence as to whether in fact the correct statutory caution was given to the appellant (which conflict was never apparent to the learned trial Judge) we were left in doubt as to what words were actually used. It would seem preferable to accept the fact that the form used was the form contained in Exhibit C as Yap Seow Swee took down in Chinese what the interpreter said to the appellant at the time he actually spoke, whereas Mr. Smith took down in English what the interpreter subsequently related he had said to the appellant.

Moreover, Yap Seow Swee could hardly have appreciated the importance of the correct form being used and had no interest in the matter one way or another.

We therefore held that the statement made by the accused to Mr. Smith was inadmissible and it followed that the only evidence implicating the accused was that of Yap Siew Lean.

The learned Judge who saw and heard the witnesses in his summing-up directed the assessors in the clearest possible terms that if they rejected the alleged confession of the appellant they should acquit him because he thought it would be unsafe to convict upon the uncorroborated evidence of the woman Yap Siew Lean. In view of this direction and having decided that the statement was inadmissible we had no alternative but to allow the appeal. We therefore set aside the conviction and quashed the sentence.

Appeal Allowed.

RE R. A. MONTEIRO, DECEASED.

[Orig. Civil Juris. (Laville, J.) June 15, 1949]

[Batu Pahat — Wage-Earner's Administration Petition No. 14 of 1941]

Pensions Enactment, 1929, s. 19 — Laws of Johore — Pensionable emoluments — Bankruptcy Enactment, s. 78 (iii).

Pensionable emoluments payable under s. 19 of the Pensions Enactment, 1929, Laws of Johore to the legal representative of an officer in the Government service who was an undischarged bankrupt is payable to the Official Assignee.

Cases referred to :—

(1) *Re Mohamed Ariff, Ex-parte the Official Assignee Singapore* (1926) S.S.L.R. 166.

(2) *Re F. A. Hendricks, Ex-parte the Official Assignee Singapore* (1936) M.L.J. 89.

(3) *Surman v. Wharton* (1891) 1 Q.B. 491.

WAGE-EARNER'S ADMINISTRATION.

H. N. McLeod for Mrs. L. I. Monteiro.

Lai Kai Joo (Assistant Official Assignee, Johore) in person.

Laville, J. : — R. A. Monteiro, a Class I teacher in the English School, Batu Pahat, was one of the victims of the Japanese in the massacre at Ulu Tiram Estate on 14-3-42.

A Wage-Earner's Administration Order had been made against him on his own application on 9-12-41 at Batu Pahat and as a result the Official Assignee was constituted receiver and assignee of his estate. Notice of the order was published in the Government Gazette of 24-12-41, but owing to the Japanese invasion no

further action was taken by the Official Assignee till after the liberation in 1945.

On 1-5-48 the Asst. Official Assignee received from the Superintendent of Education, Johore, a sum of $1,350 as a death gratuity payable to the legal personal representative of the debtor. Since then the Assistant Official Assignee has received a sum of $383.87 arrears of salary due to deceased from the Superintendent of Education, Johore.

On 13-6-48 the First Meeting of the Creditors was held by the Assistant Official Assignee. Two creditors claiming $660 in all attended. As a result the Assistant Official Assignee applied to the Court for directions under sec. 78 (iii), Bankruptcy Enactment, as to whether the total sum of $1,733.87 now in his hands shall be applied for the maintenance of the debtor's widow and family or some portion of it be appropriated for the benefit of the creditors.

At the hearing Mr. McLeod appeared on behalf of Mrs. L. I. Monteiro, the widow of the deceased debtor who took out Letters of Administration to his estate in 1947, and contended that the sum of $1,350 in the possession of the Assistant Official Assignee was a compassionate allowance payable to the personal legal representative of the deceased debtor who was his widow, as evidenced by the fact that she had Letters of Administration to his estate.

The Assistant Official Assignee contended that this sum should be made available for payment to deceased debtor's creditors and was part of his estate and not a compassionate allowance due to the deceased debtor's relative.

The evidence shows that the debtor became a pensionable officer on 1-5-36, but in view of the fact that he died before he had completed 10 years' pensionable service, was not entitled to receive a pension for his years' service in a pensionable office but had entitled his personal legal representative to be paid, subject to the approval of H. H. the Sultan in Council, not more than one year's pensionable emoluments under sec. 19 of the Pensions Enactment, 1929, Laws of Johore No. 95. This was the section under which the Superintendent of Education, Johore, paid the sum of $1,350 to the Assistant Official Assignee.

The issues that arise therefore are: who is the legal personal representative of the deceased debtor who is entitled to receive this payment, and, secondly, is such sum part of the deceased's estate and liable for his debts?

Mr. McLeod relied on the case of *Re Mohamed Ariff, Ex-parte the Official Assignee Singapore*[1], while the Assistant Official Assignee rested his case on *Re F. A. Hendricks, Ex-parte the Official Assignee Singapore*[2].

The latter case is entirely on all fours with the one now in discussion, and was brought under the provisions of sec. 20 Pensions Ordinance, 1928, of the Straits Settlements, of which, *mutatis mutandis*, sec. 19 of the Johore Pensions Enactment is an exact transcript.

In that case the learned Judge considered at length the relevant sections of the Pensions Ordinance (which are the same as those of the Johore Enactment), and also the case on which Mr. McLeod relies *Re Mohamed Ariff* and held that a payment made to the deceased's personal legal representative under the provisions of that section was not a compassionate allowance to the debtor's relatives, but compensation due to the deceased for part services, and therefore formed part of the general corpus of his estate and was liable for his debts.

The learned Judge also held, on the authority of *Surman v. Wharton*[3] that, though *prima facie* the legal personal representative of a deceased person is his executor or administrator, it does not prevent other persons having that capacity who on the death of a person become entitled to his property, and that the Official Assignee has a claim on a deceased debtor's property if that debtor was a bankrupt or under a similar incapacity at the time of his death.

I therefore hold that the Assistant Official Assignee, Johore, is the legal personal representative of the deceased debtor, R. A. Monteiro, who is entitled to receive this sum of $1,350 as being part of the deceased debtor's estate and that that sum is part of his estate and liable for his debts, and that a gratuity paid under sec. 19 of the Pensions Enactment No. 95, Laws of Johore, is not a compassionate allowance to relatives but part of the estate of the person whose death gives rise to the payment.

As to the arrears of salary of the deceased debtor amounting to $383.87, I hold that this sum too forms part of the general corpus of the deceased's estate and is liable for his debts.

I therefore direct that of the total sum of $1,733.87 in the hands of the Assistant Official Assignee such an amount be appropriated by him as would meet the payment of the claims in full of all creditors who have proved, and the balance be paid to the administratrix of the estate of R. A. Monterio, deceased.

Order Accordingly.